

SCHEDULING CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Application for Certification	)	Docket No.
for the East Altamont Energy	)	01-AFC-4
Center	)	
_____	)	

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

MONDAY, OCTOBER 7, 2002  
10:05 a.m.

Reported by:  
Peter Petty  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Presiding Member

Robert Pernell, Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Major Williams, Jr., Hearing Officer

Scott Tomashefsky, Advisor

Al Garcia, Advisor

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Staff Counsel

Cheri Davis, Project Manager

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Greggory L. Wheatland, Attorney  
Ellison, Schneider and Harris

Susan Strachan, Project Manager  
Strachan Consulting

INTERVENORS

Robert Sarvey

Michael Boyd  
Californians for Renewable Energy

ALSO PRESENT

Dave Swanson  
Western Area Power Administration

ALSO PRESENT

Rick Gilmore, General Manager

Sandra K. Dunn, Attorney

Somach, Simmons & Dunn

Byron Bethany Irrigation District

Jim Swaney, Permit Services Manager

San Joaquin Valley Unified Air Pollution Control

District

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	1, 13
Public Adviser	2
Procedural Update	15
Uncontested Topics	17
Applicant	17
CEC Staff	19
Intervenor Sarvey	20
Intervenor Boyd	21
Schedule of Topics	28
Adjournment	60
Reporter's Certificate	61

## P R O C E E D I N G S

10:05 a.m.

PRESIDING MEMBER KEESE: Good morning.

We'll call this prehearing conference to order.

We have on the phone Jim Swaney and Robert Sarvey.

We've had a series of workshops regarding the East Altamont Energy Center. And we have hearing dates set for October 15th and October 16th, and a holdover date of October 21st. And what we want to finalize today is what issues will be before us, and recognizing there have been a few administrative glitches, whether the parties are prepared to go forward on those dates.

Major, where should we start?

HEARING OFFICER WILLIAMS: Well, as a preliminary matter I would just state that Chairman Keese is present, along with Commissioner Pernell. And the Chairman's Advisor, Scott Tomashefsky is at the podium. And I'd like to introduce Commissioner Pernell's new Advisor, Mr. Al Garcia, who is also at the podium.

I'm the Hearing Officer, Major Williams, Jr. The Commission's Public Adviser, Roberta Mendonca, is present. If anyone has any questions today, any public members, about our proceedings I

1 would encourage you to introduce yourself to  
2 Roberta. Roberta, do you have any --

3 MS. MENDONCA: Could you come closer to  
4 the mike, Major. We're having trouble hearing  
5 you.

6 HEARING OFFICER WILLIAMS: Okay, thank  
7 you. Roberta, do you have anything that you'd  
8 like to say this morning?

9 MS. MENDONCA: The administrative  
10 glitches that occurred, my office attempts to  
11 track, once the notice leaves the Commission,  
12 through its various phases. And we do try to also  
13 follow up to make sure we self address, so that  
14 the Public Adviser receives a mail copy. And  
15 we're on all the list serves, so we know when the  
16 item appears, goes out to our email list server.

17 We noticed that our announcement did not  
18 appear on the web. And this was not for East  
19 Altamont, it was actually for the Tesla case. So  
20 we contacted the webworks and got the announcement  
21 for the Tesla case to appear on our website.

22 Because of that we then heard from some  
23 people in the Tracy area that they had not gotten  
24 information about East Altamont. And so we began  
25 to trace back what had happened. And there was a

1 problem in preparing the notice and the documents  
2 that went out to the intervenors in both East  
3 Altamont and Tesla.

4 My office provided the intervenors in  
5 East Altamont with copies of the final staff  
6 assessment so that they could do the best that  
7 they could to prepare in a timely fashion for your  
8 deadlines on the prehearing conference.

9 But, in fact, because their names  
10 weren't on labels, they did not receive the  
11 documents in a timely fashion. So that's the  
12 background as to what happened in terms of the  
13 intervenors' participation.

14 PRESIDING MEMBER KEESE: When did they  
15 receive them?

16 MS. MENDONCA: We over-nighted them to  
17 Bob Sarvey and he got that Saturday morning. And  
18 the prehearing conference statement was due on  
19 Tuesday.

20 COMMISSIONER PERNELL: What was that  
21 date?

22 MS. MENDONCA: They did submit a  
23 prehearing conference, both Bob Sarvey and Michael  
24 Boyd submitted prehearing conference statements.  
25 But I believe that to some extent they were not

1 complete.

2 PRESIDING MEMBER KEESE: Thank you. So,  
3 what you're saying is they received them a week  
4 ago Saturday?

5 MS. MENDONCA: I'm not sure when Michael  
6 Boyd received his. I know that Bob Sarvey got his  
7 a week ago Saturday. And he did file a prehearing  
8 conference statement. It was timely. I'm not  
9 sure that it was complete.

10 PRESIDING MEMBER KEESE: I'm sure we'll  
11 hear from them, also, but --

12 MS. MENDONCA: Yes.

13 PRESIDING MEMBER KEESE: -- and they --

14 MS. MENDONCA: I believe Mr. Sarvey's on  
15 the line this morning, and --

16 PRESIDING MEMBER KEESE: Correct.

17 MS. MENDONCA: -- I know that Mr. Boyd  
18 is attempting to join the conference call. So  
19 they'll be able to speak for themselves. I was  
20 just giving you the background.

21 PRESIDING MEMBER KEESE: Right, thank  
22 you.

23 MS. MENDONCA: Thank you.

24 HEARING OFFICER WILLIAMS: Staff, has  
25 that problem with the proof of service been



1 addressed and corrected?

2 MS. DAVIS: Yes, it has.

3 HEARING OFFICER WILLIAMS: Mr. Sarvey?

4 MR. SARVEY: -- received the final staff  
5 assessment on Monday, the day before the  
6 prehearing conference statements were due.

7 PRESIDING MEMBER KEESE: Bill Keese, Mr.  
8 Sarvey. We missed the first part of your  
9 statement. So you received the documents a week  
10 ago?

11 MR. SARVEY: Yes, one day before they  
12 were due.

13 PRESIDING MEMBER KEESE: Before the  
14 Tuesday deadline?

15 MR. SARVEY: Right, 9:38 in the morning,  
16 Monday.

17 PRESIDING MEMBER KEESE: Okay. Had  
18 you -- I believe they were available on the  
19 internet, also -- had you looked at them on the  
20 internet or --

21 MR. SARVEY: No, I hadn't seen them on  
22 the internet.

23 PRESIDING MEMBER KEESE: Okay, and you  
24 did make a filing on Tuesday?

25 MR. SARVEY: I included my witness

1 schedule and cross-examination schedule and as  
2 many exhibits as I thought were necessary, without  
3 having read the staff assessment. And I also had  
4 not received -- in the AFC which there may be some  
5 additional there -- provide.

6 PRESIDING MEMBER KEESE: You have  
7 received it?

8 MR. SARVEY: I received it the same  
9 time, the supplement C to the AFC, on the date I  
10 received the final staff assessment.

11 PRESIDING MEMBER KEESE: Okay.

12 MR. SARVEY: I don't know if there's any  
13 other documents outstanding or not, but --

14 PRESIDING MEMBER KEESE: Staff, are  
15 there -- is that what they should have received?

16 MS. DAVIS: I believe so, yes.

17 PRESIDING MEMBER KEESE: Are you  
18 prepared to go forward on the 15th?

19 MR. SARVEY: I'll do the best I can. I  
20 would like to extend the time, but I understand  
21 the scheduling pressures there.

22 PRESIDING MEMBER KEESE: So you are  
23 prepared to go forward on the 15th and 16th with  
24 your witnesses and the documents that you have now  
25 and have shared with your witnesses?

1 MR. SARVEY: Well, as far as my  
2 witnesses go, I do have one that will not be  
3 available on the 15th and the 16th. But other  
4 than that, I should be okay.

5 PRESIDING MEMBER KEESE: Thank you. Is  
6 Mr. Boyd on the line?

7 MR. BOYD: Hello?

8 PRESIDING MEMBER KEESE: Mr. Boyd, Bill  
9 Keese. Did you receive the FSA and the  
10 attachment, also?

11 MR. BOYD: I have not received a copy of  
12 the FSA yet. But I have received -- I did receive  
13 three of the amendments, including the amendment C  
14 that the applicant submitted. I received that on  
15 the weekend.

16 PRESIDING MEMBER KEESE: Last week --

17 MR. BOYD: -- and as I said, I have not  
18 received an original AFC yet, either.

19 HEARING OFFICER WILLIAMS: Staff, was  
20 that provided to Mr. Boyd?

21 MS. DAVIS: I do know that the FSA was  
22 overnighted to Mr. Boyd along with the supplements  
23 last week, beginning of last week. So I'm not  
24 sure what's happened there.

25 MR. BOYD: The stuff I received was from

1 the applicant. Maybe it'll come today.

2 PRESIDING MEMBER KEESE: Well, we're  
3 talking about a week ago.

4 MR. BOYD: No, I haven't got it yet.  
5 Honestly, all I've gotten is stuff from the  
6 applicant.

7 PRESIDING MEMBER KEESE: Now, I know you  
8 do most of your work on the internet. Have you  
9 viewed it on the internet?

10 MR. BOYD: The FSA, yeah --

11 PRESIDING MEMBER KEESE: It's all posted  
12 on the internet.

13 MR. BOYD: Yeah, --

14 PRESIDING MEMBER KEESE: Right.

15 MR. BOYD: -- my objection that I put in  
16 last week was because I wasn't receiving the  
17 written copy. Anything that's on the internet I  
18 look -- I check it every day, so --

19 PRESIDING MEMBER KEESE: Okay, well, I  
20 share both your concern and Mr. Sarvey's concern.  
21 We can't have this.

22 MR. BOYD: -- is what's going on here.  
23 I feel like I get the information; I have in like  
24 two or three days to do anything. And it just  
25 affects the quality of our work if we don't have

1 time to review the documents.

2 PRESIDING MEMBER KEESE: Okay. Now, the  
3 question that I asked Mr. Sarvey, are you prepared  
4 to go forward on the 15th and 16th, which is, you  
5 know, a week from now?

6 MR. BOYD: Well, I'd have to talk to Dr.  
7 Smallwood to make sure that he's available. And  
8 it would be helpful if we had a specific date,  
9 and, I mean right now it looks like it could be  
10 any day. The 15th or 16th, I don't know which, if  
11 I had a better idea I'd give a time certain for  
12 when I -- as far as the (inaudible) expert,  
13 (inaudible) as I said in my prehearing statement,  
14 that he -- isn't willing to put up a witness, but  
15 they gave me the name of an author that writes for  
16 (inaudible). And I --

17 PRESIDING MEMBER KEESE: Mike, I'm  
18 sorry, we're having -- I'm having a very difficult  
19 time hearing you. Let's try that again.

20 MR. BOYD: Okay. As I was saying, in my  
21 prehearing conference statement American with John  
22 Whitemore (phonetic), he has declined to be a  
23 witness because he, I guess, current contractual  
24 relationship with Calpine because of the  
25 (inaudible) project, but he gives (inaudible) of

1 another individual to be an expert witness.

2 I spoke to that person and can't afford  
3 to retain him. We don't have the resources  
4 (inaudible) considered doing that. Now, I don't  
5 know what all the procedures in that regard, but  
6 there is a witness available on SCONOX, but we  
7 don't have the resources to bring him.

8 And that's (inaudible) on the 15th or  
9 16th, I don't know. I haven't talked to them  
10 about that.

11 PRESIDING MEMBER KEESE: Well, my  
12 initial observation would be that as in every case  
13 that we have in front of the Commission on siting  
14 of a power plant, we have the applicant, who is  
15 representing the applicant's interests, and we  
16 have the staff, which, in the broadest sense, is  
17 representing the interests of all citizens of the  
18 state regarding issues related to the power plant.  
19 SCONOX being one that I know has been discussed in  
20 many cases.

21 So, if you're asking is staff prepared  
22 to discuss the issue of SCONOX, I'm sure they are.  
23 If the question is, is staff prepared to offer  
24 resources so you can bring an independent witness  
25 to discuss SCONOX, that's a new issue that I'm not

1 aware that we have ever funded anybody in that  
2 circumstance. Major?

3 HEARING OFFICER WILLIAMS: I'm not aware  
4 of any case where we've done that.

5 PRESIDING MEMBER KEESE: So, I would --

6 MR. BOYD: Why does it necessarily have  
7 to be my witness? Why couldn't it be staff's  
8 witness is what I'm asking. Staff is (inaudible)  
9 independent witnesses all the time for their  
10 position. What's to prevent them from bringing in  
11 an independent witness on SCONOX?

12 PRESIDING MEMBER KEESE: You know, I  
13 think you're perfectly welcome to ask staff that  
14 question.

15 MR. BOYD: I'll --

16 PRESIDING MEMBER KEESE: If staff  
17 wishes, you're welcome to -- I mean this is an  
18 unusual forum for you to ask that question of  
19 staff, but if staff is prepared to answer it in  
20 this forum?

21 MS. DeCARLO: Staff's testimony is not  
22 based upon the expertise of whatever experts that  
23 Mr. Boyd has referred to, and therefore we will  
24 not be calling any person up to testify, except  
25 those that have -- we've already offered written

1 testimony for, to support our position.

2 HEARING OFFICER WILLIAMS: Yeah, Mr.  
3 Boyd, staff is an independent party here. And we  
4 certainly can't constrict their presentation in  
5 any fashion.

6 MR. BOYD: But (inaudible) the public,  
7 right?

8 HEARING OFFICER WILLIAMS: Well, that's  
9 theoretically, yes, but in terms of the actual  
10 presentation of witnesses by an intervenor --

11 MR. BOYD: Well, all I'm doing is  
12 offering up the individual as a witness on the  
13 issue. If staff declines to take advantage of  
14 that witness' availability, then that's their  
15 choice.

16 PRESIDING MEMBER KEESE: Okay, what --

17 MR. BOYD: All I can do is offer it up  
18 as an expert on SCONOX. He prepared the white  
19 paper that I submitted into testimony. And if,  
20 you know, basically you can ignore it if you want;  
21 you can act on it if you want. I put the  
22 information there. I mean we can't afford to hire  
23 the guy is the bottomline.

24 PRESIDING MEMBER KEESE: Thank you.

25 HEARING OFFICER WILLIAMS: Mr. Boyd, I



1 just have one question Are you planning to attend  
2 all the sessions of the evidentiary hearing?

3 MR. BOYD: No, certainly not. I will  
4 attend the hearings where our witnesses are  
5 present -- cross-examination. (inaudible) we were  
6 listed on the calendar which I saw on the web  
7 today.

8 PRESIDING MEMBER KEESE: Okay, I think  
9 that takes care of it as far as I'd like to go at  
10 this time. What we're going to be doing today is  
11 discussing the schedule of the hearings.

12 Commissioner Pernel.

13 COMMISSIONER PERNELL: Mr. Boyd, good  
14 morning, this is Commissioner Pernel.

15 MR. BOYD: Yes.

16 COMMISSIONER PERNELL: So you'll be  
17 prepared to go forward on the 15th and 16th?

18 MR. BOYD: Whichever day that you're  
19 going to have Dr. Smallwood --

20 COMMISSIONER PERNELL: All right, thank  
21 you.

22 PRESIDING MEMBER KEESE: Major, did you  
23 want to --

24 HEARING OFFICER WILLIAMS: Yes, I would  
25 just state for the record then the parties and

1 participants that are present in the hearing room.

2 We have Mr. Wheatland, Susan Strachan. Is Mr.

3 DeYoung here? For the applicant.

4 We have Cheri Davis and Lisa DeCarlo,  
5 Project Manager and Staff Counsel, respectively.

6 Mr. Bruce Thomas, I believe, is present  
7 from Western. Mr. Thomas, would you come up --

8 MR. SWANSON: I'm Dave Swanson.

9 HEARING OFFICER WILLIAMS: Dave Swanson,  
10 I'm sorry. Would you come up. Now, Mr. Swanson,  
11 you're from the Folsom Office?

12 MR. SWANSON: Actually I'm out of our  
13 Lakewood, Colorado office. And I'm supporting the  
14 Folsom Office.

15 HEARING OFFICER WILLIAMS: I see, okay.  
16 Thank you.

17 Bay Area Air Quality, is anyone present  
18 from the Bay Area Air Quality District?

19 I believe the San Joaquin Valley Unified  
20 Air Pollution Control District is on the  
21 telephone. Listen only? Can you call up Mr.  
22 Swaney?

23 (Pause.)

24 HEARING OFFICER WILLIAMS: Mr. Swaney?

25 MR. SWANEY: Yes.

1 HEARING OFFICER WILLIAMS: Good morning.  
2 We just wanted to confirm that you were there.

3 MR. SWANEY: I'm here.

4 HEARING OFFICER WILLIAMS: Okay. And we  
5 also have Mr. Rick Gilmore and Sandra Dunn,  
6 General Manager and Counsel, respectively, for  
7 Byron Bethany Irrigation District are present.

8 Anybody from the Department of Water  
9 Resources here today? No. Okay.

10 And of course we know that our  
11 intervenors, CARE, Mr. Michael Boyd and Mr. Robert  
12 Sarvey are present.

13 Looking in the hearing room I don't see  
14 any public members. Do we have any public members  
15 here? No.

16 The Committee filed a notice of  
17 evidentiary hearing on Friday, October 4th.  
18 Hopefully all the parties have had an opportunity  
19 to look at that notice. It sets our tentative  
20 schedule, so we want to make sure everybody has a  
21 copy of where we tried to firm up the dates for  
22 testimony on the 15th and 16th.

23 I would also note that all of the  
24 participants that I've just named have filed  
25 prehearing conference statements. For that,

1 certainly the intervenors are to be commended, in  
2 light of the fact that they did not receive  
3 certain documents that were critical when everyone  
4 else did. So I would personally commend them for  
5 that.

6 And the Committee will entertain any new  
7 filings requested by the intervenors certainly up  
8 until Thursday of this week, if the intervenors  
9 feel they need to file any additional matters.  
10 The Committee will accept those filings up until  
11 the close of business on Thursday.

12 So we encourage the intervenors to bring  
13 to our attention any matters that they feel they  
14 need to bring to our attention that would  
15 necessarily cause us to have to adjust the  
16 schedule.

17 Also, the Committee passed out a  
18 prehearing conference review chart. And perhaps  
19 we can look at this as we go along to try to set  
20 the times for presentation.

21 It's my understanding that we're going  
22 to be dealing with 14 uncontested topics. And I  
23 just want to ask that the parties if they are  
24 prepared to stipulate to these 14-some-odd topics  
25 without the need for witnesses or cross-

1 examination of any kind.

2 We'll start with the applicant.

3 MR. WHEATLAND: If I can have just one  
4 minute, please, to review the list.

5 HEARING OFFICER WILLIAMS: Mr. Sarvey,  
6 Mr. Boyd, I don't know if you've had a chance to  
7 review a copy of this notice of evidentiary  
8 hearing. I know that it's on the webpage.

9 But the 14 uncontested topics that we  
10 have listed are project description; project  
11 alternatives; compliance monitoring and closure;  
12 facility design; power plant reliability; power  
13 plant efficiency; transmission system engineering;  
14 transmission line safety and nuisance; cultural  
15 resources; geology and paleontology; waste  
16 management; traffic and transportation;  
17 socioeconomics; and public health.

18 We'll hear from the applicant first.

19 MR. WHEATLAND: In our prehearing  
20 conference statement we identified a list of  
21 issues that we believe will be able to be  
22 stipulated to. We noted, though, with an asterisk  
23 that there were some minor outstanding issues,  
24 what we considered to be minor points of  
25 clarification. And that we were very hopeful of

1 reaching a resolution with the staff on those  
2 differences, so that those issues could be  
3 stipulated to.

4 And at this moment we have still -- we  
5 will be talking to the staff later this afternoon  
6 about these issues. But at the moment I would  
7 have to indicate to you that we still have to  
8 discuss with them minor points of clarification  
9 regarding compliance and closure, cultural  
10 resources, facility design, paleontology and  
11 hazmat and socioeconomics.

12 Now, as again, I'm very hopeful that  
13 we'll be able to reach resolution with the staff  
14 on these because we believe these are minor points  
15 of clarification. But we still need to have that  
16 discussion.

17 PRESIDING MEMBER KEESE: So what you're  
18 indicating is some of the issues that were just  
19 outlined by Major are not closed yet?

20 MR. WHEATLAND: Right, those issues are  
21 not complete --

22 PRESIDING MEMBER KEESE: You're not  
23 suggesting that any of the eight contested issues  
24 you have reached resolution on, or --

25 MR. WHEATLAND: That's right, I can't

1 represent to you that any of the eight that are  
2 identified as contested we've reached resolution  
3 on yet.

4 But of the uncontested issues, I wanted  
5 to indicate to you that there were still five  
6 where we still need to have a discussion to  
7 resolve minor differences.

8 COMMISSIONER PERNELL: I'm missing two  
9 of those. I only have three, so would you go  
10 through that again, please?

11 MR. WHEATLAND: Compliance and closure,  
12 cultural resources, facility design, paleontology,  
13 that's under the category of geology and  
14 paleontology, and socioeconomics.

15 COMMISSIONER PERNELL: Okay.

16 MR. WHEATLAND: Oh, and I'm sorry, and  
17 traffic. So there's six. And I mentioned hazmat  
18 before, but that's already listed as a contested  
19 issue, so I'm not mentioning it now.

20 HEARING OFFICER WILLIAMS: Okay, then I  
21 guess we'll start with -- well, staff, yes. Is  
22 that your position, as well?

23 MS. DeCARLO: Yes, subject to today's  
24 workshops we do not stipulate at this time to  
25 those issues identified by the applicant. But

1        hopefully we can reach resolution with those  
2        identified issues.

3                PRESIDING MEMBER KEESE:    And most of the  
4        issues are minor, is that your understanding?

5                MS. DeCARLO:    They're related to the  
6        conditions of certification, wording.

7                PRESIDING MEMBER KEESE:    Thank you.

8                MS. DeCARLO:    Additionally, I don't know  
9        if this is the proper time to bring this up, but  
10       the applicant infers from our testimony that we do  
11       not seek certain conditions in the area of visible  
12       plumes.    And I just want to confirm that, indeed  
13       we do, those three conditions that we did list we  
14       do recommend for adoption.    So I'm not sure if  
15       that's another issue area that they want to  
16       identify.

17               HEARING OFFICER WILLIAMS:    Well, we'll  
18       hold off on the contested matters until we get  
19       sorted out with the uncontested.

20               I guess, Mr. Sarvey, we need to hear  
21       from you now.    Do you anticipate stipulating to  
22       these uncontested topics?

23               MR. SARVEY:    I may have some issues with  
24       public health and socioeconomics issues; sort of a  
25       caveat for -- what I read in staff's information



1 is that the project should be approved with  
2 overriding considerations. And to me that ties  
3 into socioeconomic -- so I may have some issues  
4 with that.

5 HEARING OFFICER WILLIAMS: Okay. Mr.  
6 Boyd?

7 MR. BOYD: -- of the issues that came  
8 up, (inaudible) right now.

9 HEARING OFFICER WILLIAMS: Okay, what's  
10 left on the contested side is worker safety and  
11 fire protection; noise; land use; hazardous  
12 materials management; water resources.

13 MR. BOYD: No, I meant with the  
14 uncontested issues.

15 HEARING OFFICER WILLIAMS: Oh, you want  
16 me to go through those again?

17 MR. BOYD: Just (inaudible) what's the  
18 status on that now.

19 HEARING OFFICER WILLIAMS: Okay, what's  
20 left then would be power plant efficiency; power  
21 plant reliability; project description; soil --

22 MR. BOYD: Is alternatives still in  
23 there?

24 HEARING OFFICER WILLIAMS: Excuse me?

25 MR. BOYD: Is alternatives still in

1       there?

2               HEARING OFFICER WILLIAMS:  Yeah,  
3       alternatives, we haven't identified any problem  
4       with thus far.

5               MR. BOYD:  Okay, power plant efficiency  
6       and reliability, I raised some issues that had to  
7       do with natural gas supply.

8               HEARING OFFICER WILLIAMS:  Okay.

9               MR. BOYD:  Natural gas --

10              HEARING OFFICER WILLIAMS:  Okay.

11              MR. BOYD:  And on alternatives that  
12       would be among the testimony of Dr. Smallwood on  
13       the biological resources.

14              HEARING OFFICER WILLIAMS:  So you've got  
15       some points that you want to raise on  
16       alternatives?

17              MR. BOYD:  Alternatives and power plant  
18       efficiency and reliability.

19              Then also compliance -- by the applicant  
20       has --

21              HEARING OFFICER WILLIAMS:  Right.

22              MR. BOYD:  Okay.  That would be  
23       appreciated.

24              HEARING OFFICER WILLIAMS:  Are you  
25       anticipating calling Dr. Smallwood on these?

1 MR. BOYD: No, I anticipate that Dr.  
2 Smallwood would only show up for the biological.

3 HEARING OFFICER WILLIAMS: So you might  
4 have some --

5 MR. BOYD: -- then that I can stipulate  
6 to those issues right now.

7 HEARING OFFICER WILLIAMS: Okay. Let me  
8 ask a question. Can staff and applicant arrange a  
9 telephone tie-in for your discussions on these,  
10 where these minor issues are going to be  
11 discussed? Can you include the intervenors in on  
12 that?

13 MS. DeCARLO: Yeah, it's a publicly  
14 noticed workshop to occur after this prehearing  
15 conference, and --

16 HEARING OFFICER WILLIAMS: Okay.

17 MS. DeCARLO: -- it has been noticed,  
18 and I believe there is a conference call number.

19 MS. DAVIS: Yes, it's the same  
20 conference call number as this one.

21 HEARING OFFICER WILLIAMS: Okay. Great.  
22 Okay, then, so it's the Committee's preference to  
23 begin the hearing on the 15th with the uncontested  
24 matters. And I guess we won't really truly know  
25 what's uncontested until the 15th. So, at least

1 the intervenors will know, as well.

2 (Pause.)

3 HEARING OFFICER WILLIAMS: So I guess  
4 where that leaves us is we'll still begin with --  
5 we'll plan on beginning with the areas that  
6 there's no disagreement among the parties.

7 Now, where there is a disagreement that  
8 might require cross-examination from Mr. Sarvey or  
9 Mr. Boyd, then, of course, you'll have to supply  
10 those witnesses on the 15th.

11 Mr. Wheatland.

12 MR. WHEATLAND: Yeah, if I could make  
13 two suggestions, please. The first one is that  
14 following our discussion in the publicly noticed  
15 workshop this afternoon, we should be able to  
16 advise the Committee which of the issues I  
17 mentioned have been resolved and can be added to  
18 the list of uncontested issues.

19 HEARING OFFICER WILLIAMS: Okay.

20 MR. WHEATLAND: The second one is that I  
21 think it would be helpful to ask the intervenors  
22 specifically to inform the Committee which of  
23 these uncontested areas they wish to -- even where  
24 they're not sponsoring testimony -- they wish to  
25 have a witness available for questioning. Because

1 we certainly could make a witness available.

2 But I think it would be helpful if they  
3 could specifically indicate those topic areas  
4 where they would like to have a witness available.

5 HEARING OFFICER WILLIAMS: Okay.

6 PRESIDING MEMBER KEESE: That sounds  
7 reasonable. We have a list now of, a limited list  
8 of the uncontested issues, and it will expand this  
9 afternoon. But I would agree, let's do it in  
10 three steps. We agree today here that there's  
11 certain issues that are uncontested. We may agree  
12 this afternoon there are other uncontested issues.  
13 And then as to the third group of contested, which  
14 ones -- which witnesses they wish to talk about.  
15 I think that's reasonable.

16 We'll save that till we're done with our  
17 schedule here, because I think the schedule will  
18 be important to when we bring witnesses, also.

19 HEARING OFFICER WILLIAMS: Okay. Now, I  
20 had spoken to the Alameda County Fire Chief's  
21 Office; and I had indicated in our schedule  
22 attached to the notice of evidentiary hearing that  
23 we'd like to start off on the contested issues  
24 with worker safety and fire protection.

25 And we were thinking about 1:00. Right

1 now that sounds maybe a little ambitious, but  
2 we'll see. So, could you, staff, confirm that the  
3 Fire Chief will be present on the 15th about 1:00?

4 MS. DeCARLO: Sure, we'll do that.

5 HEARING OFFICER WILLIAMS: And we'll  
6 start off with worker safety and fire  
7 protection -- that's to accommodate that  
8 witness -- as our first contested matter on the  
9 15th.

10 Now, --

11 MR. WHEATLAND: May I ask a question on  
12 that issue?

13 HEARING OFFICER WILLIAMS: Sure.

14 MR. WHEATLAND: Mr. Sarvey has indicated  
15 Terrel Estes as a witness. But has only attached  
16 to his testimony a copy of the letter from Mr.  
17 Estes. And so I was wondering if Mr. Estes is  
18 actually planning to testify on that date. And if  
19 so, whether there's additional written testimony  
20 that will be provided.

21 HEARING OFFICER WILLIAMS: Mr. Sarvey,  
22 did you hear that?

23 MR. SARVEY: Yes, I did. And Mr. Estes,  
24 himself, is going to be out of the country during  
25 the hearing. So, I'll try to get one of his

1 captains to provide testimony. And I'm providing  
2 his letter as a form of a declaratory statement,  
3 seeing that the Tracy Fire Department will not be  
4 serving these facilities.

5 HEARING OFFICER WILLIAMS: Okay, then  
6 will you have this matter sorted out in time for a  
7 presentation on the 15th?

8 MR. SARVEY: I'm going to do my best.

9 HEARING OFFICER WILLIAMS: And again,  
10 the Committee would request that if you're going  
11 to file additional testimony, if you have it filed  
12 by Thursday.

13 MR. SARVEY: Okay, I have to tell you  
14 that I've been out of the country since -- about a  
15 week now, so I'm not in possession of the  
16 tentative October 4 schedule that was issued. So  
17 I don't know exactly where we stand there, but I  
18 think that if I am going to have a witness I'll be  
19 able to provide the testimony by --

20 HEARING OFFICER WILLIAMS: Okay, great.  
21 So that will set out the first contested topic.  
22 And we'll start about 1:00 on the 15th.

23 MS. DeCARLO: A quick question from  
24 staff.

25 HEARING OFFICER WILLIAMS: Um-hum.

1 MS. DeCARLO: So if we do not receive a  
2 written filed testimony by the Thursday before  
3 hearings can we assume that Mr. Sarvey will not be  
4 providing a witness in the area of fire  
5 protection?

6 HEARING OFFICER WILLIAMS: Yeah, I think  
7 that would be a pretty good assumption.

8 (Pause.)

9 HEARING OFFICER WILLIAMS: Commissioner  
10 Keese has just confirmed that what we'll do is  
11 we'll go through the truly uncontested issues  
12 first on the 15th. And we'll pick up with worker  
13 safety and fire protection at 1:00.

14 And if there are some issues that become  
15 uncontested because the parties aren't able to  
16 work things out on the minor areas that were  
17 mentioned this morning, then we'll try to conclude  
18 those matters. So that we get rid of all the  
19 uncontested or the almost uncontested issues  
20 before we get into any other further contested  
21 issues. So that will be the schedule for the  
22 15th.

23 Now, going back to the contested issues,  
24 after worker safety and fire protection, I know  
25 that applicant has requested that we do air



1 quality on the 15th, is that correct?

2 MR. WHEATLAND: Well, yes, that was the  
3 request we made in our prehearing conference, but  
4 since that time I've gotten new information  
5 regarding the schedule and some of the conflicts  
6 for one of our witnesses.

7 And so we'd like to withdraw our request  
8 that air quality be held on the 15th. And our  
9 preferred date for the air quality testimony would  
10 be the 21st.

11 HEARING OFFICER WILLIAMS: Okay, yeah, I  
12 think that that's a good idea in light of all  
13 that's happened, the failure of the intervenors to  
14 get the needed documents. So I think that makes a  
15 reasonable accommodation for them, as well.

16 Do you accept that, Mr. Sarvey and Mr.  
17 Boyd, that we're going to set air quality for the  
18 21st?

19 MR. SARVEY: I see some data that's  
20 still outstanding from the applicant there,  
21 particularly in terms of their -- configuration in  
22 their projected emissions which has been brought  
23 forth by staff in the staff assessment.

24 And it would be nice to see those issues  
25 solved before we start talking about these things.

1       There seems to be some huge discrepancies here as  
2       far as what the staff says is going to be the  
3       emission rate and what the applicant says. So it  
4       would be nice to resolve that large gap that we  
5       have there.

6               HEARING OFFICER WILLIAMS: Okay, well,  
7       again, you do plan to participate in the workshop  
8       this afternoon, correct, Mr. Sarvey?

9               MR. SARVEY: I'm in Honolulu right now,  
10       Major, so it's unlikely that I will be at the  
11       workshop. But I do plan on attending the one  
12       tomorrow for air quality.

13              HEARING OFFICER WILLIAMS: Yeah, that's  
14       right, by phone, I guess.

15              MR. SARVEY: Well, I'll be present at  
16       that one.

17              HEARING OFFICER WILLIAMS: Oh, okay.

18              MR. SARVEY: I'm coming home tonight,  
19       so.

20              HEARING OFFICER WILLIAMS: What I'm  
21       getting at is do you have any problem with us  
22       setting the air quality date for the 21st?

23              MR. SARVEY: I don't have a problem with  
24       that only that I have a feeling that air quality  
25       is going to be a subject that's going to be kind

1 of big, and that's a large discrepancy between --

2 HEARING OFFICER WILLIAMS: Right.

3 MR. SARVEY: -- actual numbers and  
4 disagreements between staff and the applicant.  
5 Hopefully we can work those out tomorrow --

6 HEARING OFFICER WILLIAMS: Okay.

7 MR. SARVEY: -- at the air quality  
8 hearing.

9 HEARING OFFICER WILLIAMS: Okay, so  
10 then, Mr. Boyd, for your witness, the 21st is the  
11 date for air quality. Okay? Mr. Boyd?

12 SPEAKER: He left.

13 HEARING OFFICER WILLIAMS: Okay. Now,  
14 let me know if he comes back.

15 Now, staff has requested that we do  
16 noise on the 15th, as well.

17 MR. WHEATLAND: Excuse me, please.

18 PRESIDING MEMBER KEESE: Mr. Wheatland.

19 MR. WHEATLAND: This is related to the  
20 air quality matter. We're setting air quality on  
21 the 21st. Could we also set the visual resource  
22 plume analysis for that date, also? Because the  
23 issue of the visual plumes will also involve the  
24 same air quality witness for the applicant.

25 HEARING OFFICER WILLIAMS: Okay, so

1 we'll do visual and air on the 21st. Okay, is  
2 that satisfactory to everybody?

3 MS. DeCARLO: Yeah, and will that be  
4 visual resources and then the plume analysis, or  
5 specifically --

6 HEARING OFFICER WILLIAMS: Yeah, let's  
7 do it --

8 MS. DeCARLO: -- just the plume  
9 analysis?

10 HEARING OFFICER WILLIAMS: -- all  
11 together. So, staff, you wanted to do noise on  
12 the 15th, as well?

13 MS. DeCARLO: Yes, if possible, please.

14 HEARING OFFICER WILLIAMS: Okay. Is  
15 that satisfactory?

16 MR. WHEATLAND: Yes.

17 HEARING OFFICER WILLIAMS: Okay. So  
18 we've got noise on the -- we'll pick up with noise  
19 after we've done all the uncontested issues, and  
20 after we've concluded worker safety and fire  
21 protection. So noise will be the second contested  
22 issue, fully contested.

23 MS. DeCARLO: And as an update we may  
24 potentially be able to resolve noise in today's  
25 workshop, depending upon how things play out,

1       so --

2               HEARING OFFICER WILLIAMS:   Okay.

3               MS. DeCARLO:   -- we may not even --

4               HEARING OFFICER WILLIAMS:   That would be  
5       great.  If the parties -- I think it would be  
6       helpful to the Committee, as well, if the parties  
7       can file something after the workshops, before the  
8       end of the week, to give us a final update.  Maybe  
9       just a status report, you know, by the end of the  
10      week that reports on how matters were.  Just  
11      briefly give us some indication of where we are on  
12      the outstanding issues, the time, planning and  
13      that sort of thing.  If you could do that?

14              MR. WHEATLAND:   Yes.

15              HEARING OFFICER WILLIAMS:   Okay.  You  
16      know, serve it on all the parties.

17              Okay, any more requests for the 15th?

18              MS. DeCARLO:   Staff has one request.  
19      Since the intervenors have identified land use as  
20      a topic that they would like to cross-examine  
21      staff on, staff would like the opportunity to  
22      provide some direct testimony, both with staff  
23      witnesses Eileen Allen and Negar Vahidi, and  
24      additionally Adolph Martinelli, the Agency  
25      Director of the Alameda County Community

1 Development Agency.

2 HEARING OFFICER WILLIAMS: Okay.

3 MS. DeCARLO: And we would like that to  
4 occur towards the end on the 15th, if possible.

5 HEARING OFFICER WILLIAMS: Okay.

6 MS. DeCARLO: Mr. Martinelli has a  
7 meeting that goes until 2:00 p.m.; so sometime  
8 after that.

9 HEARING OFFICER WILLIAMS: Okay. It  
10 will probably be after that. So, let's plan on  
11 picking up land use to accommodate your witness.

12 MR. SARVEY: Mr. Williams.

13 HEARING OFFICER WILLIAMS: Yes.

14 MR. SARVEY: I have a conflict with my  
15 land use witness on the 15th or 16th. It would  
16 have to be, you know, at this point, cross-  
17 examination would have to be on the 21st or  
18 thereafter. That's the only problem I have as far  
19 as the schedule.

20 HEARING OFFICER WILLIAMS: Okay. Well,  
21 we'll -- so, he --

22 PRESIDING MEMBER KEESE: How is staff on  
23 the 21st?

24 MS. DeCARLO: The 21st and the 22nd,  
25 unfortunately, our consultant Negar Vahidi, who

1 did the bulk of the analysis will be on vacation.

2 (Pause.)

3 HEARING OFFICER WILLIAMS: Mr. Sarvey?

4 MR. SARVEY: Yes.

5 HEARING OFFICER WILLIAMS: Your witness  
6 is not available on the --

7 MR. SARVEY: 15th or 16th.

8 HEARING OFFICER WILLIAMS: -- 15th or  
9 16th.

10 MR. SARVEY: The 21st I can make him  
11 available.

12 HEARING OFFICER WILLIAMS: Yeah. Now,  
13 the problem, as I see it, is that we probably  
14 should try to make the testimony available to your  
15 witness to review --

16 MR. SARVEY: Um-hum.

17 HEARING OFFICER WILLIAMS: -- for the  
18 21st.

19 MR. SARVEY: Okay.

20 HEARING OFFICER WILLIAMS: So we'll do  
21 that, we'll expedite the transcripts and hopefully  
22 we'll be able to get those to you to give to your  
23 witness to look at.

24 MR. SARVEY: So we'll split land use on  
25 two different days, then?

1 HEARING OFFICER WILLIAMS: Right.

2 MR. SARVEY: Okay.

3 HEARING OFFICER WILLIAMS: Okay?

4 MR. SARVEY: That's fine.

5 HEARING OFFICER WILLIAMS: All right.

6 So let me make a note of that, that we need to get  
7 you those transcripts.

8 MR. SARVEY: I should have two witnesses  
9 on land use. I can probably present the first  
10 witness on the first day.

11 HEARING OFFICER WILLIAMS: Okay.

12 MR. SARVEY: He will be available.

13 HEARING OFFICER WILLIAMS: Okay, that'll  
14 work then.

15 MR. SARVEY: Okay.

16 HEARING OFFICER WILLIAMS: Okay.

17 MR. SARVEY: Good.

18 HEARING OFFICER WILLIAMS: So, let me  
19 see, any other requests for the 15th? Okay.

20 Now, I know we've got water resources we  
21 want to take up on the 16th because the Water  
22 District has requested that that water resources  
23 be heard on 10/16.

24 MS. DUNN: If possible, we would like to  
25 be heard first thing on the 16th, if --



1 HEARING OFFICER WILLIAMS: Right.

2 MS. DUNN: -- that can be accommodated.

3 HEARING OFFICER WILLIAMS: Ten o'clock,  
4 we'll plan on proceeding right into water first  
5 thing on the 16th. Okay?

6 MS. DeCARLO: If I may, staff does have  
7 an objection to the participation of BBID. They  
8 are not formal parties to this proceeding. Staff  
9 would not object if they were sponsored by another  
10 party, however they have not formally intervened.

11 HEARING OFFICER WILLIAMS: Yeah, I  
12 understand that they didn't formally intervene.  
13 The Committee's position, though, is that they're  
14 a necessary party. And they have information that  
15 obviously is critical to a resolution of this  
16 issue. So, --

17 MS. DeCARLO: Will they be provided the  
18 rights to cross-examine and provide briefs, as  
19 well?

20 HEARING OFFICER WILLIAMS: Yes.

21 MS. DeCARLO: Okay. In the matter of  
22 testimony for water resources staff does object to  
23 the provision of legal testimony. Staff believes,  
24 I believe both the applicant and BBID have offered  
25 as witnesses lawyers. And staff believes that

1 legal opinions are the proper subject of briefs  
2 and not testimony.

3 HEARING OFFICER WILLIAMS: Applicant?

4 MR. WHEATLAND: Well, this is an area in  
5 which the Commission had traditionally allowed  
6 great leeway. For example, you will find in each  
7 section of the FSA testimony regarding compliance  
8 with applicable LORS. Generally, that testimony  
9 is being offered by nonlawyers. But we have  
10 always allowed great leeway as to the nature of  
11 that testimony.

12 If we were to strictly interpret the  
13 requirement that no legal testimony could be  
14 contained in any filing in the nature of testimony  
15 then two things would have to happen. One is we'd  
16 have to strike all of the sections of the FSA that  
17 apply to LORs. And second of all, we'd have to do  
18 it on the grounds that their witnesses are not  
19 competent to testify to those areas.

20 And those, of course, would be a silly  
21 result because the Commission, for about 25 years,  
22 has allowed testimony on the question of the  
23 compliance with LORS as part of the evidentiary  
24 hearings.

25 HEARING OFFICER WILLIAMS: Yeah, I think

1       that, you know, the Committee is prepared to hear  
2       the witnesses and, you know, to the extent that  
3       they offer legal conclusions, the Committee is  
4       certainly free to decide what weight to give that  
5       testimony.

6               MS. DeCARLO:  Then staff reserves the  
7       right to provide our own witness on legal matters  
8       in water quality.

9               HEARING OFFICER WILLIAMS:  Absolutely.  
10       The Committee, again, will entertain that  
11       testimony and decide what weight to give to it.

12              MR. WHEATLAND:  When would the staff be  
13       filing such testimony?

14              MS. DeCARLO:  Within a couple days.

15              HEARING OFFICER WILLIAMS:  Thursday.

16              MS. DeCARLO:  Thursday.

17              HEARING OFFICER WILLIAMS:  Okay, --

18              MS. DUNN:  Can I ask one other question?

19              HEARING OFFICER WILLIAMS:  Sure.

20              MS. DUNN:  We had wanted to prepare a --

21              HEARING OFFICER WILLIAMS:  Come up to  
22       the mike; introduce yourself, too, for the record,  
23       please.

24              MS. DUNN:  I'm Sandra Dunn; I'm Special  
25       Counsel for BBID.  In order to help facilitate the

1 summary of the testimony for BBID we would like to  
2 prepare a PowerPoint presentation that just  
3 summarizes and highlights points of our testimony.

4 It will not include any new matters. It  
5 will simply just be used for illustrative  
6 purposes, to present the testimony by BBID.

7 HEARING OFFICER WILLIAMS: No problem.  
8 I would encourage you to just get over to the  
9 facility and make sure that, you know, all the  
10 plugs and that sort of thing were where they need  
11 to be.

12 MS. DUNN: We will do that.

13 HEARING OFFICER WILLIAMS: Okay.

14 MS. DUNN: Thank you.

15 HEARING OFFICER WILLIAMS: Yes, just as  
16 a logistics matter.

17 MS. DeCARLO: If we can request that the  
18 PowerPoint be supplied prior to the hearings, that  
19 would be great.

20 HEARING OFFICER WILLIAMS: Yeah, that  
21 would be helpful, as well, certainly.

22 MS. DUNN: We can do that.

23 MS. DeCARLO: Okay, thanks.

24 MR. SARVEY: Excuse me, Major, this is  
25 Bob Sarvey.

1 HEARING OFFICER WILLIAMS: Yes.

2 MR. SARVEY: Are we going to be  
3 accepting BBID's testimony as to hearsay, or is it  
4 going to actually be admitted as evidence since  
5 they're not intervenors? I --

6 HEARING OFFICER WILLIAMS: Well, we're  
7 going to treat them as intervenors. Essentially  
8 they're a necessary party; the Committee feels  
9 that they're a necessary party despite the fact  
10 that they didn't intervene.

11 MR. SARVEY: Would they have to have had  
12 intervened by the proper dates to be included as  
13 evidence?

14 HEARING OFFICER WILLIAMS: Well, not  
15 necessarily. I think they've been -- they've  
16 participated -- they've been involved in the  
17 proceedings throughout. The Committee doesn't  
18 feel it would be fair to exclude BBID because they  
19 have information that we need to resolve the  
20 issues in the area of water resources.

21 So they will come in in this area of  
22 water resources, and we will treat them as we  
23 would any other party in this area.

24 MR. SARVEY: I'd have to agree with  
25 staff's position on this circumstance. I don't

1 really think that they are a true party to this  
2 unless they properly intervene which is required  
3 of all of us -- providing evidence at this  
4 hearing. So I just want to note that for the  
5 record.

6 HEARING OFFICER WILLIAMS: Okay, so  
7 noted.

8 PRESIDING MEMBER KEESE: Mr. Wheatland.

9 MR. WHEATLAND: I'd just like to also  
10 note for the record that BBID is a responsible  
11 local agency; they do have regulatory authority  
12 over this project by virtue of being the water  
13 provider.

14 And the Commission has, for many years,  
15 again, allowed the agencies, both state and local,  
16 that have permit jurisdiction over a project, to  
17 participate in the proceedings, both to provide  
18 comments or testimony without having to be  
19 sworn -- to be sworn into evidence, but not having  
20 to file a petition to intervene.

21 And it's like the Air District, the  
22 Water District, there are many other agencies that  
23 are allowed to participate fully in these  
24 proceedings without having to file that petition  
25 to intervene.

1 MS. DeCARLO: The staff is unaware of  
2 what permits that BBID will be approving for this  
3 facility.

4 MR. WHEATLAND: They are the local water  
5 provider, and they have a legal obligation to  
6 provide water to this project. So they are going  
7 to set the rates and conditions of service for  
8 this, as they would any other customer.

9 MS. DeCARLO: But they're not a  
10 regulatory agency, per se.

11 MR. WHEATLAND: Oh, I believe they are.  
12 I believe they are. In fact, I would -- I think  
13 as we go into these hearings we will find that  
14 some of the recommendations that the staff may  
15 make would, in effect, require the Commission to  
16 override the regulatory authority of BBID.

17 HEARING OFFICER WILLIAMS: Well, the  
18 Committee has made its ruling, so, you know, and  
19 the objections are noted, as well.

20 So, I guess then the next topic area,  
21 hazardous materials management, will be handled on  
22 the 16th. So hazmat will follow water resources  
23 on the 16th.

24 MR. SARVEY: I have one question related  
25 to that.

1 HEARING OFFICER WILLIAMS: Okay, yes.

2 MR. SARVEY: Will the hazardous  
3 materials response, will that be handled under  
4 worker safety and fire protection, or will that be  
5 handled under hazardous materials?

6 HEARING OFFICER WILLIAMS: I think I  
7 prefer to do it under hazardous materials.

8 MR. SARVEY: Okay, so the emergency  
9 response to the hazardous materials -- do it at  
10 that time?

11 MS. DeCARLO: Actually I believe in  
12 staff's testimony that's handled under worker  
13 safety and fire protection, the response time of  
14 the local fire department. So we have the same  
15 witness for both subject areas, but I think  
16 technically it should fall under fire protection.

17 HEARING OFFICER WILLIAMS: Okay.

18 MR. WHEATLAND: That's also the way we  
19 have it, as well.

20 HEARING OFFICER WILLIAMS: Okay. So I  
21 stand corrected then. That would be on the 15th,  
22 Mr. Sarvey.

23 MR. SARVEY: Okay. I don't have any  
24 problem with that, I just wanted clarification of  
25 what time --



1 HEARING OFFICER WILLIAMS: Okay. And  
2 then I guess -- have I left anything out? Have we  
3 covered everything?

4 Biological resources, yes, on the 16th.  
5 Will follow -- biological resources will follow  
6 hazmat on the 16th.

7 (Pause.)

8 HEARING OFFICER WILLIAMS: Is that  
9 satisfactory to the parties?

10 MR. WHEATLAND: Yes.

11 MS. DeCARLO: Yes.

12 HEARING OFFICER WILLIAMS: The 16th?  
13 Okay. Mr. Sarvey, did you hear that?

14 MR. SARVEY: I believe you said the  
15 16th?

16 HEARING OFFICER WILLIAMS: Right.

17 MR. SARVEY: Yeah, that should be fine.

18 HEARING OFFICER WILLIAMS: Okay. So,  
19 does anybody have any questions on the schedule,  
20 then, that we've put together here this morning?

21 MS. DeCARLO: One comment on staff's  
22 behalf. Because public health is so  
23 interconnected with air quality, and there tends  
24 to be questions from the public on public health  
25 when we have our air quality witness, we will be

1 providing our public health witness during the  
2 time of air quality, if that's appropriate.

3 HEARING OFFICER WILLIAMS: Yeah, I think  
4 that's a good idea actually, to have the witness  
5 there on the 21st, as well. I don't know if you  
6 all are going to be able to reconcile the minor  
7 issues. And it will be helpful to have that, you  
8 know, that flexibility to take up public health on  
9 the 21st. So, yes.

10 MR. WHEATLAND: I don't believe there  
11 are any outstanding issues between the staff and  
12 the applicant on public health. So unless Mr.  
13 Sarvey were to indicate that he had questions for  
14 witnesses on that date, we would be able, I  
15 believe, to put that --

16 HEARING OFFICER WILLIAMS: I think he  
17 did. I think he did indicate that he had some  
18 public health issues. So, to the extent then that  
19 we're not able to accommodate public health on the  
20 15th, we'll move it over to the 21st.

21 MR. WHEATLAND: You asked if there was  
22 other questions.

23 HEARING OFFICER WILLIAMS: Yes.

24 MR. WHEATLAND: I have one other. I was  
25 handed this morning a copy of testimony of Duane

1 Grimsman, General Manager of Trimark Communities,  
2 and Eric Teed-Bose, Project Manager for Mountain  
3 House. And I believe this is not the Mountain  
4 House Community Services District, but the  
5 Mountain House development.

6 It's dated October 2, 2002. And filed  
7 by the staff. The applicant would object to the  
8 introduction of this late-filed testimony. It's  
9 our position that if it was intended to be part of  
10 the staff's testimony it should have been included  
11 in the FSA. Or, at the very latest, by October  
12 1st, which was the deadline that the Committee set  
13 for the filing of such testimony. We don't  
14 believe there's any excuse for filing it on  
15 October 2nd.

16 Moreover, these two individuals are not  
17 necessary parties. I don't even think the staff  
18 would argue that they're a regulatory agency. And  
19 we believe that to file their testimony late and  
20 in this form would be inappropriate. So we would  
21 object.

22 HEARING OFFICER WILLIAMS: Staff?

23 MS. DeCARLO: Staff apologizes for the  
24 lateness of the filing. Because they are an  
25 outside participant, it was a little difficult to

1 coordinate the filing of the testimony.

2           However, we do believe the testimony is  
3 critical to the Committee's determination on the  
4 availability of recycled water. The two gentlemen  
5 that are proffered as witnesses are very cognizant  
6 of how the development is proceeding in the  
7 Mountain House area, and can give the Committee  
8 up-to-date information on the development, which  
9 is critically linked to the subsequent  
10 availability of recycled water.

11           HEARING OFFICER WILLIAMS: Mr.  
12 Wheatland.

13           MR. WHEATLAND: Again, I'd object to the  
14 untimely nature of it. The applicant made an  
15 extraordinary effort to file its testimony on  
16 October 1st, just 11 days after the issuance of  
17 the FSA. We did it on October 1st because the  
18 Committee told us that was the deadline.

19           And you may remember in this last  
20 scheduling conference I asked for a couple of  
21 days, and the Committee insisted that we do it on  
22 October 1st. And I said, yes, we will.

23           There's simply no excuse for filing this  
24 on October 2nd. The staff didn't even give us the  
25 courtesy of a call asking for permission to late

1 file, to inform us that they were preparing it, or  
2 to give us the common courtesies that would be  
3 expected of any parties in a proceeding who wanted  
4 to file last-minute testimony.

5 This simply was sprung on us. Even if  
6 it was filed on the 2nd, it wasn't emailed to me.  
7 I just received it this morning. And we don't  
8 believe that there's any basis at all for having  
9 it come in this late and in this form.

10 And I think the Committee -- it's very  
11 important to maintain the due process of this  
12 proceeding, that the Committee enforce its  
13 scheduling deadlines.

14 MS. DeCARLO: The testimony consists of  
15 only a couple pages. And staff does not believe  
16 the one-day lateness jeopardizes or prejudices the  
17 applicant in any way. There's still sufficient  
18 time to prepare their response or their cross-  
19 examination on the witnesses for evidentiary  
20 hearings.

21 (Pause.)

22 PRESIDING MEMBER KEESE: Are we talking  
23 about this thing dated October 7th?

24 MS. DeCARLO: No, no, that's just an  
25 addendum to staff's prehearing conference.

1           PRESIDING MEMBER KEESE: Okay, we're  
2 talking about something that we don't have in  
3 front of us?

4           MR. WHEATLAND: Right, --

5           MS. DeCARLO: Correct.

6           MR. WHEATLAND: -- it's something that  
7 apparently hasn't been -- wasn't expeditiously  
8 served on anyone --

9           HEARING OFFICER WILLIAMS: It was filed  
10 on the 2nd.

11          MR. WHEATLAND: On the 2nd; I'm not even  
12 sure it was mailed on the 2nd.

13          MS. DeCARLO: We did mail it.

14          MR. WHEATLAND: And that actually it's  
15 additional testimony that the staff wishes to  
16 introduce. And I'd suggest that if we -- that  
17 this could be accepted as public comment.

18          HEARING OFFICER WILLIAMS: Yeah, I think  
19 the appropriate thing to do, Mr. Wheatland, is to  
20 give you additional time to respond to this new  
21 filing. If you need until Thursday, perhaps, to  
22 file a response, or to gather a witness, yourself,  
23 perhaps.

24          The Committee would like to deal with it  
25 that way. We're not going to exclude it. But

1 we'll give you all the time that you need to  
2 figure out how to respond to that testimony.

3 MR. WHEATLAND: Could the Committee also  
4 direct the staff to provide us timely notice of  
5 these matters, because as I mentioned, this is a  
6 serious breach, to be handed this this morning.  
7 This is something that if the staff was working  
8 on, they should have been able to serve to us  
9 electronically. Ms. DeCarlo should have been able  
10 to call me on the 2nd to let me know that over her  
11 signature she had issued a letter, to give me the  
12 courtesy of two days to prepare for the  
13 conference.

14 This is what we're -- I appreciate the  
15 additional time that the Committee is giving us,  
16 but I do consider this a serious breach of  
17 etiquette and procedure, to begin it in this  
18 forum.

19 HEARING OFFICER WILLIAMS: Yeah, and  
20 again, we've had several breaches of our rules  
21 here. And certainly the Committee is concerned  
22 about it. So, staff, please give the applicant  
23 the courtesy of notifying them when you have  
24 material that's going to be falling outside of the  
25 deadlines.

1 MS. DeCARLO: Yes, and I apologize for  
2 the lateness of their receipt. We did mail it on  
3 the 2nd. So, I do not know why they're just  
4 receiving it today.

5 COMMISSIONER PERNELL: Mr. Williams, do  
6 we have a copy of that?

7 HEARING OFFICER WILLIAMS: Yes, we do.  
8 Yes. It was docketed. I've looked at it briefly.

9 MR. WHEATLAND: May I ask just two brief  
10 questions. Then these two gentlemen will be  
11 available --

12 MS. DeCARLO: Yes, they will be  
13 available to testify.

14 MR. WHEATLAND: And are they available  
15 for discovery?

16 MS. DeCARLO: To you mean voir dire,  
17 or --

18 MR. WHEATLAND: Discovery. There's  
19 information that's listed in here that hasn't been  
20 previously disclosed. Will they be -- is that  
21 subject to discovery between now and the date of  
22 the evidentiary hearing?

23 MS. DeCARLO: Yes, if you have questions  
24 of them.

25 MR. WHEATLAND: Thank you.



1 HEARING OFFICER WILLIAMS: Yeah, I mean  
2 I would encourage staff to cooperate with the  
3 applicant in terms of any discovery requests based  
4 upon this testimony. You're certainly entitled to  
5 it. So, we don't want to incur any delays based  
6 upon this newly filed testimony. So try to work  
7 with the applicant to make sure that any requests  
8 for information are handled expeditiously.

9 Okay, any further questions?

10 MS. DeCARLO: The staff would like some  
11 confirmation that what specific topic areas  
12 Michael Boyd will be at the hearings to cross-  
13 examine staff on. And which specific witnesses in  
14 which areas he will be providing testimony for.

15 His prehearing conference statement was  
16 a little unclear in that area. And I know in the  
17 past staff has encountered the situation where we  
18 have provided witnesses and Mr. Boyd has not  
19 intended to cross-examine.

20 So we would just like -- I know he's off  
21 the line now, but if we could have some  
22 confirmation at some point before the hearings?

23 PRESIDING MEMBER KEESE: I think -- Mr  
24 Boyd, do you happen to be online again? No.

25 I believe Mr. Boyd indicated on the

1 phone that he would be there when, is it Dr.  
2 Smallwood would be there?

3 MS. DeCARLO: Right.

4 PRESIDING MEMBER KEESE: Which would be  
5 the 21st.

6 MS. DeCARLO: But he also identified  
7 several areas that he wanted to cross-examine  
8 staff on --

9 PRESIDING MEMBER KEESE: And that he  
10 wouldn't be there at the other --

11 MS. DeCARLO: Correct. And staff will  
12 not -- is not intending to provide witnesses if  
13 there will be no one to cross-examine them.

14 PRESIDING MEMBER KEESE: Well, I think  
15 we should try to confirm that, because what I  
16 heard --

17 MS. DeCARLO: Yeah.

18 PRESIDING MEMBER KEESE: Ms. Mendonca,  
19 could you do that? But I believe that what I  
20 heard from Mr. Boyd was he would be there when Dr.  
21 Smallwood was there, and he would not be there at  
22 the other times. Does he have other witnesses  
23 other than Dr. Smallwood?

24 HEARING OFFICER WILLIAMS: He just  
25 indicated today on the phone that alternatives and

1 power plant efficiency, I think, and maybe one  
2 other, that he would like certain witnesses for  
3 cross-examination.

4 PRESIDING MEMBER KEESE: But he also  
5 indicated that he wasn't going to be there.

6 HEARING OFFICER WILLIAMS: But hopefully  
7 we could shore that up through the workshops, and  
8 perhaps the parties can comment on that in the  
9 statements to be filed by the end of the week. So  
10 everybody will be on level ground as to what his  
11 precise participation will be.

12 Probably we'll know better after the  
13 workshops.

14 PRESIDING MEMBER KEESE: It was the  
15 Committee's intent to wrap this up -- original  
16 intent to wrap this up on the 15th and 16th. And  
17 for that purpose, the Committee was considering an  
18 extended hearing on the 15th.

19 We have now done two things. We've  
20 extended the hearings to the 15th, 16th and 21.  
21 We've also potentially extended the issues from  
22 eight to 13, I believe.

23 So, we will start on the 15th. It's our  
24 intent to start on the 15th at 10:00, and be  
25 prepared to finish everything that we haven't

1 moved to the 21st on the 16th.

2 And if it looks like we're having  
3 trouble on the 16th, we will have a late -- we  
4 won't go very late, but we won't leave at 4:00 or  
5 5:00 on Tuesday. We'll get as far as we can on  
6 Tuesday to give us a reasonable shot of concluding  
7 whatever else we have to do on the 16th,  
8 defaulting the three issues, I believe it is, that  
9 we have defaulted to the 21st.

10 Is that --

11 MR. WHEATLAND: Yes.

12 PRESIDING MEMBER KEESE: Okay.

13 HEARING OFFICER WILLIAMS: Yes, Mr.

14 Wheatland.

15 MR. WHEATLAND: These are two hopefully  
16 minor housekeeping matters. The first one with  
17 respect to air quality on the 21st, I note you  
18 have Mr. Swaney on the line. Because of the  
19 nature of the phone system he can't join in. You  
20 may just want to check with him to confirm his  
21 availability on the 21st.

22 HEARING OFFICER WILLIAMS: Okay. Let's  
23 do that.

24 Mr. Swaney?

25 MR. SWANEY: Yes.

1 HEARING OFFICER WILLIAMS: I take it you  
2 heard our conversation about doing air quality and  
3 possibly a little public health on the 21st?

4 MR. SWANEY: Yes, I did hear that, and  
5 we have no problems with that.

6 HEARING OFFICER WILLIAMS: Okay, great,  
7 thank you, sir.

8 MR. WHEATLAND: Thank you. And the  
9 other minor matter is that in our prefiled  
10 testimony we identified Mr. Rubenstein as our  
11 witness on air quality and some related matters.  
12 And provided a statement of his qualifications.

13 But his declaration was inadvertently  
14 omitted, and I will be filing and serving that on  
15 the parties immediately.

16 HEARING OFFICER WILLIAMS: Thank you.  
17 Staff, do you have anything else?

18 MS. DeCARLO: No further comments.

19 HEARING OFFICER WILLIAMS: Mr. Sarvey,  
20 do you have anything further?

21 MR. SARVEY: Yeah, I have a couple  
22 items. One, I'd like to have (inaudible) have a  
23 copy of Mr. Bose, and I believe it's Mr.  
24 (inaudible)'s testimony, and I would really like  
25 to make sure I do have that.

1           And also I'd like to have air quality go  
2           last on the 21st because I would like to present  
3           my land use issues for certain on the 21st, -- air  
4           quality go over, so I just put that out there.

5           HEARING OFFICER WILLIAMS: Okay. That's  
6           a reasonable request, so we'll do that. Thank  
7           you.

8           MR. SARVEY: Okay, thank you.

9           COMMISSIONER PERNELL: Mr. Williams,  
10          just for my records here, can you go over what has  
11          been stipulated as noncontested topics?

12          HEARING OFFICER WILLIAMS: Okay, --

13          COMMISSIONER PERNELL: So that we can  
14          get those off the table now.

15          HEARING OFFICER WILLIAMS: -- well,  
16          again, the topics that we will deal with first on  
17          the 15th --

18          COMMISSIONER PERNELL: There are some  
19          topics that are uncontested that we perhaps can  
20          deal with now, through stipulation, or -- it's  
21          everything on this list. Project description, for  
22          example, is --

23          HEARING OFFICER WILLIAMS: Yes.

24          MR. WHEATLAND: If you'd like I can read  
25          those subject areas that I believe are absolutely

1 uncontested as between the applicant and the  
2 staff. Mr. Sarvey would have to join in with  
3 respect if he has issues. But I can read to you  
4 those that I understand are completely  
5 uncontested.

6 HEARING OFFICER WILLIAMS: No, I think  
7 that won't be necessary, Mr. Wheatland.  
8 Commissioner Pernell --

9 COMMISSIONER PERNELL: Yeah, thank you,  
10 Mr. Wheatland, we can -- I've been informed that  
11 we can do this at the hearing on the 15th, and  
12 that will go fairly quickly, and we can get those  
13 off the table at that time.

14 HEARING OFFICER WILLIAMS: So, point of  
15 clarification there. We're going to wait until  
16 the 15th.

17 MR. WHEATLAND: Okay.

18 HEARING OFFICER WILLIAMS: I think we're  
19 pretty clear on what areas that we're going to  
20 deal with first, and how we're going to proceed.

21 So I think with that --

22 PRESIDING MEMBER KEESE: The last thing,  
23 we still do have the 22nd on reserve, but it's  
24 this Committee's fondest hope that we not use the  
25 22nd.

1 Thank you.

2 HEARING OFFICER WILLIAMS: Thank you.

3 PRESIDING MEMBER KEESE: We're  
4 adjourned?

5 HEARING OFFICER WILLIAMS: That's it,  
6 we're done.

7 (Whereupon, at 11:24 a.m., the  
8 scheduling conference was adjourned.)

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## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
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I further certify that I am not of  
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